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1948.

**File No.** O. Indus Relations/48

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Legal **DEPARTMENT**

A **BRANCH**

**Subject:—**

Opinions under the Bombay Industrial Relations Act, 1946.

F-95

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**File No.** O. Indus Relations/48

Std. Sectt. Slip 24-B e.

66-A.

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SMT/4.6.

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether in the proceedings before a labour court an employee may be represented by a representative union in an industry.

Section 79(1) of the Bombay Industrial Relations Act, 1946, provides :-

> "Proceedings before a labour court in respect of disputes falling under clause (a) of paragraph A of sub-section (1) of section 78 shall be commenced on an application made by any of the parties to the dispute, special application under sub-section (3) of section 52 or an application by the Labour Officer and proceedings in respect of a matter falling under clause (a) of the said paragraph A on an application made by any employer or employee directly affected or the Labour Officer."

Sub-section (2) requires that every application under sub-section (1) shall be made in the prescribed form and manner. The form prescribed for making the application is form 'P' under rule 71 of the Bombay Industrial Relations Rules, 1947. It appears from that form P that an application can be made by a registered union, an employee or a Labour Officer. Disputes regarding matters under clause (a) of paragraph A of sub-section (1) of section 78 fall under sub-section (4) of section 42. Under sub-section (2) of section 42, an employee desiring a change in respect of an industrial matter not specified in Schedule I or III shall give notice in the prescribed form to the employer through the representative of the employees who shall forward a copy of the notice to the Chief Conciliator; the conciliator for industry concerned for the local area, the registrar, the Labour Officer and such other person as may be prescribed. But under sub-section (4) an employee desiring a change in respect of any order passed by his employer under the standing orders or in a industrial matter arising out of the application or interpretation of the standing orders or any industrial matters specified in Schedule III shall make an application to the labour court : provided that no such application shall lie unless the employee has in

... in the prescribed manner approached his employer with request for the change, and no agreement has been arrived at in respect of the change within the prescribed period. Sub-section (2) of section 43 provides for giving a special notice in writing to the representative of employees entitled to represent such employees etc. Reading these provisions together, it appears that in disputes falling under sub-section (4) of section 42, it would be open to an employee to apply to the Labour Court direct for relief ~~where~~ after giving notice to the employer.

Under section 30 a representative union for all industry is entitled to act as the representative of employees in such industry in any local area. Under section 33 notwithstanding anything contained in any other provisions of this Act, an employee shall be entitled to appear through any person ——

(a) in all proceedings before the Industrial Court;

(b) in proceedings before a Labour Court in for deciding whether a strike, lock-out or change or an order passed by an employer under the Standing Orders is legal;

(c) in such other proceedings as the Industrial Court may, on application made in that behalf, permit;

Provided that a legal practitioner shall not be permitted under clause (c) to appear in any proceeding under this Act except before a Labour Court or the Industrial Court.

Section 33 is no doubt an enabling provision; and it would be open to an employee to appear before a Labour Court through any person even though a representative union is a party to such proceedings. But, as stated above, in matters falling under sub-section (4) of section 42 it would be competent for an employee to apply to the Labour Court direct for relief without making a representative union a party. In such cases it appears that the representative union would not be entitled under section 30 to appear before the Labour Court on behalf of the employee, for, the words used in section 30 are "as the representative of employees" which obviously does not indicate appearance on behalf of a single employee; other wise there was no need to use the word "employees" in plural as has

as has been done throughout in section 30, whereas in section 33 the word is used in singular. However, under section 33 an employee is entitled to appear through any person. The word "person" as defined in section 3(35) of the Bombay General Clauses Act1 1904, shall include any company or association or body of individuals whether incorporated or not. A representative union is an association of individuals. Consequently it is a person within the meaning of section 33. It would, therefore, be open to an employee to appoint a representative union to appear for him in such proceedings even though the representative union is not entitled to appear for him under section 30; If, however, the P. and S.D. desires that a representative union should be entitled to appear for an employee before a Labour Court in disputes under section 79(1) read with section 42(4) in respect of which an application is made by an employee direct instead of through the representative union, the Act will have to be amended.

P.M.LAD.
5/2.

Remembrancer of Legal Affairs.

U.R. to P. and S.D. No. 1267 , dated the 6th February 1948.

Subdd. for signature.

Sd/-
5/2

A.L.R. R.T.K.
5/2

R.LA.

Issued.
Sd/-

Submitted after with an index card. file in G. Industrial Relations/48.

A.A.S. Sd/- D.S. Sd/-

Sd/-

S.A.S. Sd/-

A.S. Sd/-

P.A. Sd/-

A Branch.

SHT/32.5.

L.D.R.I.No. 1861 dt. 18/2/48.

Submitted.

2. The Fereration of Bank Employees, Bombay, was registered under the Indian Trade Unions Act, 1926, on 6th Dec. 1947, and applied for registration as a epresentative Union under the Bombay Industrial elations Act, 1946. In view of the provisions of ec. 3(25) and 13(1) of the Bombay Industrial elations Act, 1946, P. & S.D. considers that the federa-ion must have the necessary membership for three months after registration underthe Indian Trade Unions Act, 1926, before it can apply for registration under the B.I.R.Act. The R&L.A. is requested to advise in the matter.

3. Subsection (1) of sec. 13 of the Bom. Industrial Relations Act, 1946, provides that any union which has for the whole of the period of three months next preceedi ing the date of its so applying under this section a membership of not less than fifteen per cent of the total number of employees employed in any industry in any local area may apply in the ;prescribed form to the Registrar for registration as a Representative Union for such industry in such local area. The term "Union" is defined in clause (38) of sec. 3 means a Trade Union of employees which is registered under the Indian Trade Unions Act, 1926. The word "membership" is not defined in the Act and in view of the fact that this membership relates to a Trade Union of employees registered under the Indian Trade Unions Act, 1926, the definition, if any, will be the one stated in that Act. But this word has not been defined in that Act or the rules made thereunder . It will therefore have to be given its ordinary meaning "Membership" as applied to a body of persons, a term which emplies not only the enjoyment of its pregileges but subjection to the rules governing it.(cf Iyer's Law Lexicon, 806).

If all these previsions are read together it would appear that the Federation of Bank Employees must have at least 20 per dent of membership for three months after registration under the Indian Trades Unions Act, before it can apply for registration under section 13(1) of the Bom. Industrial Relations Act, 1946 (of R.L.A. No. 9225, dt. 15-9-1939).

P.S.Nadkarni.
23/2.

A.L.R. I agree Reply may be :-
Seen & returned.

A The view further by the office of the Registrar, Bombay Industrial Relations Act in para, of its note is correct. The absence of the definition of "membership" in the Bombay Industrial Relations Act, 1946 does not affect the legal position. A

R.T.Ka tarki.
23/2

R.L.A. P.M.LAD.
25/2/48

Reply A-A

M.O.R. to P & S.D. No. 1979 dt. 27th Feb. 1948.

BNT/31.5.

Office of the R.L.A.

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pprentice is
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erker

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Bombay Industrial Relations Act,1946, Section 2(13); and

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Factories Act,1934 section 2(h).

It appears that Government is proposing to initiate a scheme of textile apprentices in collaboration with the Textile owners of Shelapur. The textile owners have agreed to cooperate with Government in the said scheme on three conditions mentioned at p. 1 in the letter of the Director of Industries. One of those conditi ons is that no apprentice has a right of appeal to the Labour Court under the Bombay Industrial Relations Act. The R.L.A. is requested to advise whether apprentices are not employees as defined under section 3, clause (13) of the Industrial Relations Act, 1946, and also not workers as defined in section 2, clause (h) of the Factories Act, 1934.

'Apprentice' means a learner; one who has taken to learning trade; a person usually a minor bound in form of law under a contract of apprenticeship to a master to learn from him his art, trade, or business and to serve him during his time of apprenticeship (see Iyer's Law Lexicon, p. 78). A person is bound to another for the purpose of learning his trade, or calling; the contract being of the nature that the master teaches and the other serves the master with the intention of learning (see Pearl Cockburn C.J. Chapman vs. St.Pancras, 29, L.J.M.C.,143,144). "Employee" as defined in section 3, clause (13) of the Bombay Industrial Relations Act, means any person employed to do any skilled or unskilled manual or clerical work for hire or reward in any industry and includes those specified in clause (a) and (b). "Employee" as defined in section 44 of the Commonwealth Conciliation and Arbitration Act 1904-1934 of Australia means any employee in any industry and includes any person whose usual occupation is that of employee in any industry. While interpreting that of employee in any industry. While interpreting that provision in 'Long vs. Chubbs Australian Company Limited' (1935) 53, CLR. 143, the Court observed :

"The employment of apprentices in industry, their relation to tradesmen, and the use of apprentices by employers to the prejudice, real or supposed, of other labour has, as is well known, been a common source of industrial conflict. The reason for this lies in the fact that tradesmen have a material interest which is very real in the conditions of juvenile labour and of juvenile training in the industry in which theyare work."

It is clear from these observations that an apprentice was deemed to be an employee within the meaning of section 4 of the Commonwealth Conciliation and Arbitration Act. It is true that the definition of "employee" in that Act does not contain the words "for hire or reward". But the absence of those words do not appear to make any material difference in view of the fact that the objects of both the Acts, that is to say, the Commonwealth Conciliation and Arbitration Act and the Bombay Industrial Relations Act are the same, namely, to settle industrial disputes by arbitration. It may also be observed that in the present case the apprentice is proposed to be paid some stipend which amounts to hire or reward for work in the industry within the meaning of section 3 clause (13) of the Bombay Industrial Relations Act. Consequently, although an apprentice is one engaged for the purpose of learning his trade, he would be still an employee who needs and is entitled to the protection of the Bombay Industrial Relations Act.

"Worker", as defined in section 2, clause (h) of the Factories Act, 1934, means a person employed whether for wages or not in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing or process or any other kind of work whatsoever, incidential to or connected with the manufacturing process or connected with the subject of manufacturing process, but does not include any person solely employed in clerical capacity in any room or place where no manufacturing process is being carried on. It appears from this definition that the payment of wages is not essential for apperson to be called a worker within the meaning of section2, clause (h), What appears essential is that

is that he must be employed in any manufacturing process etc. An apprentice can be deemed to be as much employed in any manufacturing process as any other worker. The object of the Factories Act is to safeguard the health and safety of the workers employed in the factories. An apprentice needs as much protection as any other worker employed in a factory. Consequently, it appears that an apprentice is a worker within the meaning of section 2, clause (h).

P.M.LAD.
24/3.

Superintendent of Legal Affairs.

U.R. to P. & S.D.No. 2976, dated the 27th March 1948.

Submitted for signature.

Sd/-
24/3.

A.A.S. Sd/-
24/3

A.L.R. R.T.K.
24/3

R.L.A.

SHT/L.6.

Office of the R.L.A.

It appears that the dispute between Narayandas Chunilal Cotton Spinning and Weaving Mills, Gadag, and its employees was referred to arbitration of the Industrial Disputes Act, 1938. The Industrial Court gave its award on 16-2-1948, and Government has made the award on 16-2-1948, and Government has made the award binding on both the parties. One of the terms of the award relates to the payment of 14 annas per day as dearness allowance which represents an increase of 8 annas per day. The Company was not prepared to raise the scale of dearness allowance to 14 annas because they maintained that "production of cloth and yarn had gone down considerably of late, and the cost of production on the other had had steadily risen." While awarding enhancement of the allowance Mr.D.G.Kamerkar, Member of Industrial Court, made the following observations:

> "The demand of the employee for 14 annas per day; i.e. for an increase of 8 annas in the dearness allowance is, therefore, without doubt reasonable and deserves to be granted. It is immaterial that the Company has not been making considerable profits or is being run at a loss. The demand of the employees for a fair minimum wage has got to be met, and if the industry is not able to bear the burden of such a wage, the industry becomes a drag on the social and economic structure of the country and cannot be encouraged to survive, as I have observed in my orders in several other adjudications. I should here point out that the Conciliator too had proposed an increase in the dearness allowance by 6 annas 6 pies, i.e. 12 annas 6 pies per day; but the Company thinks did not accept the proposal then and the conciliation had therefore failed."

For the purpose of announcing their decision to close the mill with effect from 15-3-1948, the management gave a notice to employees on 1-3-1948 which reads as follows:

> "All the officers, clerks and employees of the mills are hereby informed by notice that our mills are running under loss for the last 3 months and that Government have increased the dearness allowance of the employees from annas 6 to annas 14 and have ordered to pay. The mills could not afford to pay such enhanced dearness allowance and that the management do not intend to incur more loss to the mill. Hence the close down of our mills from 15th

March 1948. All the employees should treat this Notice as a legal 14 days' notice".

Mr.Datar who was deputed to visit Gadag to study the situation says in his report that the enhancement of the dearness allowance as a result of the award of the Industrial Court hastened the decision of the management to close the establishment because of the continued losses that the management are reported to have suffered during the past and the possible losses they may have to suffer and the further burden that the management by the recent award resulting in an absolutely un-economic working. The manager assured him that it was not his intention to by-pass the award of the Industrial Court. In fact the mill had worked for almost one month and the experience during the month was sufficient to prove that further working on the same scale was impossible. The Manager also stated that the management were anxious to re-open the mills as soon as either the prices of cotton went down or in the alternative the control of the prices of cloth and yarn was removed. It also appears from that report that there was a section among the workers which was prepared to accept a small cut in the dearness allowance as awarded by the Industrial Court with a view to making it possible for the management to restart the mills with immediate effect. Mr.Datar finally pointed out that it was likely that the mill would continue to remain closed at least till the 16th of May (before which date neither party to the award could terminate it)when the manager would give notice of termination. It is upon these facts that we have to decide the question whether the closure of the mills can be considered as an illegal lockout under section 98(i)(h) of the Bombay Industrial Relations Act, 1946.

2. The award made under the Act of 1936 shall be deemed to have been made under the corresponding provisions of the Act of 1946. There is moreover no substantial difference in the provision of the two Acts regarding the difinition of an "illegal lockout" or of a "lockout". The relevent portion of the definition of a "lockout" is to the effect that a lockout means the closing of a place of employment or the total suspension of work by an employer where such closing or suspension occurs in consequence of an industrial dispute and is intended for the purpose of compelling any of the employees directly affected by such closing or suspension to accept any term or condition of or affecting employment. This definition is modelled on the definition of lockout in the Trade Disputes and Trade Unions Act, 1927 (17 & 18 Geo.V., Ch.22). A lockout is generally taken to mean the converse of a strike; it is the refusal by an employer to allow his workmen to work unless they will accept his rate of wages or the conditions of labour he imposes. In neither case is the employment finally determined, the intention of the workmen in the one case and of the employer in the other being that the employment shall be continued as soon as a satisfactory settlement of the matter in dispute can be arrived at. See the case of Amlgamated Society of Engineers (Perth Branch) v. Millers' Karri & Jarrah Co.Ltd., 1907, 9 W.A.L.R. 207 quoted at p.273 of Words and Phrases Judicially difined Vol.III . Under section 98(1)(h) a lockout becomes illegal if it is commenced or continued in contravention of the terms of a registered agreement or a settlement or award.

3. In this there has undoubtedly been a closing down of the place employment or suspension of work. The next question which arises for consideration is whether such closing or suspension is intended for the purpose of compelling the employees directly affected by such closing or suspension to accept any term or condition of or affecting employment. Intention must always remain a matter for proof upon available evidence, and a person

ann a person is presumed to intend the natural consequences of his act. The facts recited at length are prima facie sufficient to prove the intention of compelling the workers to accept reduced dearness allowance. In gathering that intention we have to consider in particular the following circumstances:-

(1) The earlier refusal of the Company to accept the conciliation proposal and the contention of the management before the Industrial Court that they were not prepared to raise the scale of dearness allowance as that would add to the cost of production.

(2) The statement by Mr.Kamerkar that whether they were capable of bearing the burden or not the allowance had to be raised and the industry cannot be encourged to survive,- which statement the manager says was an indirect hint to close down the concern.

(3) The announcement made in the notice that the management cannot afford to pay the enhanced deafness allowance.

(4) The intention of the management to re-open.

(5) The willingness of a section of workers to forgo the enhancement:

and finally

(6) The statement by Mr.Datar that the mill would give notice of termination after 16th May.

All these circumstances taken together go to show that the underlying purpose of the closing or suspension was to compel the employees to forgo the enhancement of the dearness allowance. I am, therefore, inclined to the view that the closing down can be treated as a lockout.

4. Under section 102 a penalty is provided for declaring a lockout which a Labour Court holds or the Industrial Court declares to be illegal. Under section 98(1)(h) a lockout becomes illegal if it is commenced or continued in contravention of the terms of the award. The Manager's contention that there is no contravention because the Member of the Industrial Court who gave the award did almos invited the establishment to close down is hardly tenable. Once it is held that the lockout was inspired by the dominant idea of compelling workers to forgo the dearness allowance, it would follow that such lockout would be in contravention of the terms of the award which

award which requires the payment of the enhanced dearness allowance.

5. In my opinion, therefore, there is a prima facie case for making a reference to the Industrial Court. A reference to that Court is preferable considering that the lockout arises out of an award given by that Court. The question of meeting out the punishment under section 102 arises only after the lockout is declared illegal.

P.M.LAD.
30/4.

Researchmuncor of Legal Affairs.

U.R. to Labour Department, No. 4252, dated the May 1st May 1948.

Submitted for signature.

Sd/-

A.A.S. Sd/- 30/4

A.L.R. R.T.K. 30/4

R.L.A.

SHT/ 1.6.

Office of the R.L.A.

Question whether "housing" is an industrial matter.

Bombay Industrial Relations Act, 1947, section 3(18), 73,

It appears that the workers of the New Pratap Mills, Dhulia, were living in chawls belonging to the Mill but as the chawls have become unfit for human habitation, the management intended to pull them down after service of notices on the workers. The workers did not prefer to vacate the chawls and the Dhulia Girni Kamgar Union gave a notice of change to the Management on 6-7-1947 demanding reconstruction of new chawls in place of the old ones. Conciliation proceedings held in this connection resulted in failure as the management declined to rebuild the chawls. The question before Government is whether a reference of the dispute to the industrial court for arbitration can be made under section 73(2) of the Bombay Industrial Relations Act, 1947. Secy., Labour Department, is doubtful whether "housing" is an industrial matter within the diginition of section 3(18) and whether a reference under section 73 would be competent. The R.L.A. is requested to advise.

2. Under section 73(2) of the Bombay Industrial Relations Act, 1947, it would be competent for Government to refer an industrial dispute to the arbitration of the Industrial Court when the dispute is not likely to be settled by any other means. What is therefore necessary to make a reference of an industrial dispute to the arbitration of the Industrial Court competent would be that the dispute must be an industrial dispute between the parties. "Industrial dispute" as defined in section 3(17) means any dispute or difference between an employer or employes etc. and which is connected with any industrial matter. "Industrial matter" as defined in section 3(18) means any matter relating to employment, work, wages, hours of work, previleges,

rights or duties of employers or employees or the mode, terms and conditions of employment and includes -

(a) all matters pertaining to the relationship between employers and employees or to the dismissal or non-employment of any person;

(b) all matters pertaining to the demarcation of functions of any employees or classes of employees;

(c) all matters pertaining to any right or claim under or in respect or concerning a registered agreement or a submission, settlement, or award made under this Act; and

(d) all questions of what is fair and right in relation to an industrial matter having regard to the interest of the person immediately concerned and of the community as a whole.

Under section 42(2) an employee desiring a change in respect of an industrial matter not specified in Schedule I or III shall give notice in the prescribed form to the employers through the representative of employees, etc. It is therefore clear that an industrial dispute may relate to a matter not specified in Schedules I or III. Item 3 in Schedule III relates to health, safety and welfare of employee, including water, dining sheds, rest sheds, latrines, urinals, creches, restaurants and such other amenities. This item deals with amenities which an industry should provide to ensure the health, safety and welfare of the employees whole employed in the industry. Housing accommodation, as pointed out by the Secretary, Labour Department, will not fall within item 3 of Schedule III not does it fall under any of the other items under Schedules I and III. But that alone would not preclude the dispute from being called an industrial dispute which can be referred to an Industrial Court for arbitration. It would be sufficient for the purpose if such dispute relates to an industrial matter. Housing accommodation for workmen does not obviously relate to employment, work, wages, hours of work, etc., within the meaning of section 3(18); but that clause defines "industrial matter" between any matter relating also to privileges, rights or duties of employers or employees. Permitting workers to live in chawls belonging to the mill

can, in my opinion , be treated as a privilege of the workers. The word "privilege" as used in its broad and commonly accepted sense means a peculiar advantage, a personal benefit. It means in connection with the context a particular and peculiar benefit or advantage enjoyed by a person or class beyond the common advantage of other citizens. It represents the enjoyment of some desirable right. In the case of Lestrang v. Pettifar (1931, 161 Law Times p.30) Lord Justice Lawrence said that a privilege described some advantage to an individual or group of individuals; a right enjoyed by a few, as opposed to a right enjoyed by all. In this particular context, where it is contrasted with the word "rights" and also with the mode, terms and conditions of employment, it need not mean something over which one has a legal claim. In Marsh v. Estcourt (1890, 24 Q.B.D. p.147), referring to the occupation by labourers of certain cottages, Wills J. made the following remarks : "Here the labourers were not required to reside in the cottages but were allowed to reside only as a privilege." The learned Judge was construeting occupation as a term of the employment where the servant is compelled or required to occupy the premises and occupation by the servant who is permitted to occupy as a special benefit or as part of remuneration.

3. I am, therefore, inclined to the view that the provision by the employer of residential accommodation for employees is a privilege, so that any matter relating to it would be an industrial matter and a dispute or difference between an employer and employees connected with such industrial matter would be an industrial dispute which it would be competent to Government to refer for arbitration under section 73(2).

P.M.LAD.

Remembrancer of Legal Affairs.

U.O. to Labour Deptt., No.5288, dated 4th June 1948.

SMT/1.6.

Office of the R.L.A.

On 15th October 1946 the Industrial Court made an award on revision petition miscellaneous No. 1 of 1946 (Textile Labour Association, Ahmedabad V. Ahmedabad Mill-Owners Association, Ahmedabad) that "the award which was given on 3rd/20th September 1945 should continue and remain in force for a period of seven months from the 8th August 1946 at the end of which period either party shall be at liberty to approach the Court for continuance or revision of the allowance". On the expiry of that period the Textile Labour Association filed the revision petition miscellaneous No. 1 of 1947 requesting that the dearness allowance paid to the Textile Workers in Ahmedabad should be revised. In the meantime the Textile Labour Association have applied to Gover nment that the award that would be passed by the Industrial Court should be extended even to the operatives employed by contractors as such employees would come within the definition of "employee" in section 3 clause (13) of the Bombay Industrial Relations Act, 1947. The Secretary, Labour and Housing Department observes :

> "The Court's award subsists for the purposes of the revision petition filed by the Textile Labour Association, Ahmedabad on 8.3.1947 when the award was due to lapse. (see p. 163). The revision will be completed under section 122(d) without reference to the repealing Act (B.I.R.Act). If the award is given further life as a result of the Court's revision, the question is whether it can be extended to a new category of employees (ne mely contractor's employees) under section 114(2) by the Provincial Government having regard to the fact that the definition of 'Employee' stands amended in the new Act so as to include the new category. The R.L.A. is requested to advise on the point."

It is true that under clause (d) of section 122 of the Bombay Industrial Relations Act, 1947, it would be competent for the Industrial Court to make an order extending the operation of the award passed under the Bombay Industrial Disputes Act, 1938, but the award thus extended would continue in operation as if it

were an award extended under the Bombay Industrial Disputes Act, 1938. Under clause (c) of section 122 of the Bombay Industrial Relations Act, 1947, any right privilege, obligation or liability acquired, accrued or incurred under the Bombay Industrial Disputes Act, 1938, ~~xxxx

be extended by the Industrial Court in the present case would not be an award under the Bombay Industrial Relations Act, The benefit of the extended difinitions of employees in the Bombay Industrial Relations Act would not therefore, be available in the present case.

P.M.LAD.
7/6

Remembrancer of Legal Affairs.

U.R. to Labour Deptt. No. 5412, dated the 8th June 1948.

SMK/1.6.

L.D.R.I. 7766
Dated 23-6-1948.

Submitted:

The secretary of the Surat Textile Labour Union in his letter to H.M.(Lab.) dated 2-6-48 has brought to the notice of the Govt. a deficiency in the Bombay Industrial Relations (Amendment & Act 1948. By virtue of sec. 13 of the said Act a new section 73A was inserted in the Bombay I.R.Act 1946 under which

> "a registered Union which is a representative of the employees and the rules of which provide for the matter specified in cl.(vi) of sub-section (1) of section 23, could refer at any time any industrial dispute for arbitration to the Industrial Court, provided that no such dispute shall be referred to the Industrial Court, where under any provision of this Act, it is required to be referred to labour Court for its decision."

Thus a Representative Union of the employees has been given powers to refer an industrial dispute for arbitration to Industrial Court but no corresponding amendment of sec. 87(vi) empowering the Industrial Court to decide such a dispute has been made. The Secretary, Labour Department, is of the opinion that until such consequential amendment is made in clause (vi) of sec.87(a), the general provision of clause (x) of the same section would serve the purpose effectively. R.L.A. is requested to advise.

"Seen and returned.

The view expressed by the Secy.

Labour Department, is correct." A

Sd/-
8/7

A.M.R. R.T.Katarki.
9/7

R.L.A. P.M.LAD.
9/7.

Reply A-1

M.O.(R. Labour Department. No. 6508 dt. 12-7-48.

SNT/1.6.

Legal Department.

It is not stated on what points legal opinion is required. But is is presumed that these points are :-

(1) Whether the action of the management of the India United Mills in engaging some persons in the place of those employed who have gone on strike is illegal.

(2) Whether the alleged action on the part of certain congress workers and the executive of the I.N.T.U.C. Textile Union in asserting the management is illegal.

As regards the first point there is nothing in the Bombay Industrial Relations Act, 1946 which prevents an employer from engaging persons for work in the place of those who have gone on strike. Such engagement does not amount to a look-out as defined in the Act. If as a result of such engagement, the employer does anything which will bring him within the mischief of section 101 of the Act, he will be criminally liable.

As regards the second point, if any action of the congress workers or the executive of the I.N.T.U.C. amounts to the offences of criminal intimidation under section 503 Indian Penal Code, they will be liable to prosecution. It is understood that I.N.T.U.C. is not a registered union under the Bombay Industrial Relations Act. Section 15 of the Act has therefore, no application. It is however a registered trade union under the Trade Unions Act, 1926. Even assuming that the executive of the Union has assisted the management of the India United Mills as alleged, it does not appear that such action will be an unfair practice under section 28 of the Trade Unions Act.

J.R. Dinarandhar.
13/8

Additional Secretary to Government.

U.R. to Labour Department, No. 7724, dated the 13th August 1948.

SNT/1.6.

Bombay Industrial Relations Act, 1947 and Rules thereunder.

Section 49(1) and rules 55 and 56.

Whether non-employees can be nominated on the Joint Committee.

Section 49(1) of the Bombay Industrial Relations Act, 1947, provides :

> " A Joint Committee shall consist of such number of members as may be prescribed; half the number shall in the prescribed manner be nominated by the union and the other half appointed by the employer concerned. Where the Joint Committee is to be constituted in pursuance of a direction of the Provincial Government on an application made by the registered union, the union and the employer shall nominate and appoint the members within such period as the Provincial Government may by order specify. A copy of such order shall, as soon as may be, given to the union and the employer in the manner prescribed."

This provision gives power to the registered union to nominate members on the Joint Committee. Th expression "members representing the employees" used in section 50 shows that the members are nominated by the Union for thepurpose of representing the employees. The substantive provisions of the Act do not support the view that only employees can be nominated as members by the Union.

The rules are framed for the limited purpose of prescribing the number of members and the manner of their nomination. They cannot be relied upon for deciding the qualifications for nomination. Moreover, except in Rule 56 there is nothing to show that the nomination must be confined to employees.

Rule 55(1) provides:-

> "The Joint Committee shall consist of ten members of whom five shall be nominated by the registered union and five appointed by the employer concerned."

Sub-rule (2) provides :

> Within 30 days of the decision to constitute a Joint Committee for an undertaking or occupation and every 12 months thereafter, the employer and the registered union shall appoint or nominate person to trepresent them on the Committee."

Sub-rule (3) states :

> "Before making such nominations the

Sub-rule (3) states :

> "Before making such nominations the registered union shall call a meeting and consult the employees of the undertaking or occupation concerned as the case may be."

These rules do not require that the members nominated by the registered union must necessarily be the employees of the undertaking or occupation concerned. Rule 56 appears to give some indication in this respect. That Rule provides:

> "In the event of a member of the Joint Committee ceasing to be employed in the undertaking or occupation or retiring or ceasing in any other way to be a member of such a Committee, the vacancy shall be filled by nomination in the manner prescribed in rule 55 by the registered union or appointment by the employer according as the person who has ceased to be member was nominated by the union or appointed by the employer."

This provision relates also to the vacancy caused by the retirement of a member nominated by the registered union or appointed by the employer concerned. However the words ~~[illegible]~~ "ceasing to be employed in the undertaking occupation" necessarily imply the nomination by the registered union of persons belonging to the undertaking or occupation concerned The reasonable interpretation of rule 55(3) read with rule 56 would, therefore, suggest that employees of the undertaking or occupation concerned alone have the right to be nominated.

Nevertheless, as stated above his Rule cannot seek to achieve so to say by a side wind, what should have been more appropriately provided for by the substantive section and to the wrong extent the Rule seeks to lay down the qualification of the members to be nominated, it would be declared ultra vires. This objection was raised at the time the rules were framed., in the course of the personal discussion with the representative of the Labour Department.

If it be the intention to confine the nomination to employees in the undertaking or occupation, it would be advisable to amend the sections suitably.

P.M.LAD.

9/

Remembrancer of Legal Affairs.

INT/1.6. W.R. 29 Labour Department, No. 8595, Dated the 10th Sept. 1948.

Office of the R.L.A.

The view taken by Secretary, Labour Department, is correct. In view of the fact that the conciliation proceedings have already been completed and the Board of Conciliation will soon conclude its labours, the employees in the undertakings other than the sixteen silk mills would not, for want of notice, be deemed to be parties to the dispute within the meaning of section 59(2) of the Bombay Industrial Relations Act, 1946, and no declaration under section 43(5) can be made at this stage.

P.M.LAD.

Recommencer of Legal Affairs.

U.O. to Labour Deptt. No. 9879, dated 22nd October 1948.

SMT/L.G.

Office of the R.L.A.

In view of the High Court decision in Appeal No.31 of 1943 (The Province of Bombay Vs. Western India Automobile Association and Others) it would be competent for a Labour Court or the Industrial Court to order reinstatement of a dismissed worker. This decision will stand till reversed by the Federal Court in the appeal preferred by the Western India Automobile Association.

P.M.LAD.
16/12.

Remembrancer of Legal Affairs.

U.R. to Labour Department, No. 12004, dated the 17th December 1943.

Draft reply Submitted for approval and Signature.

A.A.S. Sd/-

A.L.R. R.T.K.
16/12

R.L.A.

SRT/1.6.

Question whether Chief Engineer is an employee within the meaning of section 3(13) of the Bombay Industrial Relations Act, 1946.

On a strict interpretation of the provisions of the Bombay Industrial Relations Act, 1946 the Chief Engineer may not be included in the definition of "employee" in section 3(13). However in the light of the R.L.A's opinion No. 9218 dated the 29th September 1948 the Labour Department may decide it having regard to the nature of work the Chief Engineer is required to do.

P.M.LAD.
31/12.

Remembrancer of Legal Affairs.

U.R. to Labour Department No. 39-
dated the 3rd January 1949.

SMT/1.6.

Office of the Rakada

Bombay Industrial Relations Act, 1946. section 30, 33 and 34(6).

Can Government Labour Officer give his own independent view while representing the case of workmen before the Industrial Court.

In Reference No. 1 of 1948, the Government Labour Officer was treated as the statutory representative of employees under section 30 of the Bombay Industrial Relations Act, 1946. Notice was, therefore, issued to the Government Labour Officer, Bombay, asking him to file a statement of claim in this matter and the Millowners' Association to submits written statement in reply thereto by a certain date. The copies of the notice to the Government Labour Officer were sent to the unions for their information. It appears that the secretaries of two unions prepared their statements and forwarded them to the Industrial Court through the Government Labour Officer. In forwarding these statements of claim, the Government Labour Officer states in a covering letter that no approach was made to him by the individual workers but the two unions submitted their statements of claim on their behalf. The Millowners' Association filed it s written statement in reply to the statements of claim without prejudice to their contention that they were entitled to take no notice of the statements of the two unions submitted by the Government Labour Officer on the ground that no employee had directly approached him.

2. In paragraph 5 of their award in the above reference, pronounced on 13-4-1948., the Industrial Court observed as follo ws:-

> "At the time of hearing also Sir Jamshedji Kanga raised a preliminary objection on behalf of the Association tha none of the unions per se had a right to appear on a right to prepare a statement on behalf of the employees or to take part in these proceedings. He, therefore, suggested that the statements should not be taken on record and that the Government Labour Officer be direct to file a statement after consulting the employees or taking their instructions and that the Association be given an opportunity to submit its reply later on. We think there is force in this contention. The Government Labour Officer admitted that he had not received any representation from the employees and, therefore, he did not file any statement. He also said that he didn not consult the individual employees before forwarding the statements. In such cases, we think, it is imperative for the Government Labour Officer to contact the emplo as soon as he receives the notice from this Court and t prepare a statement under their instructions and file same in the Court. If the employees place divergent views before him, in presenting the case to the Court should see as to which is majority view and which in his opinion is reasonable for him to adopt as his own

3. In his note Secretary, Labour Department says : "The Government Labour Officer who can easily assess which is the majority view among the workmen should normally present that view to the Court and leave it to the Court to judge its reasonableness. This would be the strictly democratic way of handling the case as representative of workers. It should rarely be necessary for Government Labour Officer himself to judge what is reasonable; it may for instance conceivably happen that the Government Labour Officer thinks it unreasonable to make a particular demand at all; it is surely not intended in such a case that the proceedings should fall through. Government Labour Officer is to represent the workers, not himself. That is the principal reason why the Labour Officer is prohibited to enter into an agreement under sub-section (1) of section 44 of the Bombay Industrial Relations Act. I am therefore inclined to omit the portion X on p. 5 and confirm the remainder of the sentence.

Perhaps R.L.A. may advise on the legal issues and procedures"

4. Under sub-section (6) of section 34 of the Bombay Industrial Relations Act, 1946 it is no doubt the duty of the Labour Officer to watch the interests of employees and promote harmonious relations between employers and employees. That general duty would not, however, authorised him to decide what is reasonable for him to adopt as his own view, when the employees place divergent views before him. Under section 30, he is acting as the representative of the employees. The true functions of a representative is to represent and not to judge. He is in the position of an agent or an attorney who stands in the place of the employees and it is his duty to reflect their point of view and to act according to their instructions. He cannot undertake the judicial functio of assessing the reasonableness of the divergent views before him. In the absence of any other satisfa- numbers must naturally decide what should be

presented as the view of the employees. It is open to the Government Labour Officer to ascertain the view of the majority; and his duty requires that he should faithfully present that view. The dissident minority has always the right of independent representation under section 33, and cannot therefore, complain that they are denied the opportunity of placing their view before the Court.

5. Apart from the practical difficulties pointed out by Secretary, Labour Department, it would not, in my opinion, be quite legal for the Government Labour Officer to form his own independent view according to the notions of reasonableness. I, therefore, concur in the conclusion reached by the Secretary, Labour Department.

P.M.LAD.
14/12.
Remembrancer of Legal Affairs.

U.O. to Labour Department, No. 11904, dated the 15th December 1948.

Submitted for signature.
Sd/-
14/12.

KHK.

SM/2.6.

Office of the R.L.A.

Upon the facts described in the note by the secretary, Labour Department, the question which arises for consideration is whether clause (c) of rule 39 of the Bombay Industrial Relations Rules, 1947, applies to this case, and whether the [illegible] procedure of issuing notices to employers even though they be members of the Mill-owners' Association is in order.

2. As the Mill-owners' Association, Bombay is not entitled represent all the employers in the industry under section 27(2), the case is admittedly governed by sub-section (3) of section 27 of the Bombay Industrial Relations Act, 1946. The representative is, therefore, to be determined in the prescribed manner, and what manner is prescribed by rule 39 of the Bombay Industrial Relations Rules. The rule reads as follows :

> "(1) Where more employers than one are affected or under any of the provisions of the Act deemed to be affected and no association of employers is under sub-section (2) of section 27 entitled to represent all of them, the representative determined in the following manner shall be entitled to act as their representative:-
>
> (a) Where there is an association of employers and two-thirds or more of the employers who are not members of the association agree to be represented by the association, that association;
>
> (b) Where there is an association of employers but less than two-thirds of the employers who are not members of the association are in favour of their being represented by the association, not more than five representatives elected from among all the employers at a meeting held by the Labour Officer for the purpose, provided that at least one of the representatives shall be from among the employers who have not agreed to be represented by the association;
>
> (c) In all other cases, not more than five representatives elected by the employers at a meeting held by the Labour Officer for the purpose:
>
> Provided that where the number of employers affected or deemed to be affected does not exceed five no election shall be held and all the employers concerned shall be entitled to act as the representative.

(d) Any vacancy in the representatives elected under clause (b) or (c) shall be filled by election at a meeting of the employers held by the Labour Officer for the purpose."

3. Clause (c) is obviously inapplicable. The inquiry, therefore, boils down to this: whether clause (b) as contended by Sir Vithal Chandavarkar, President of the Mill-owners' Association, or clause (c) as followed by the Labour Department, is applicable.

4. In my opinion, clause (b) is not applicable for the following reasons.

5. The clause requires that there should be an association of employers, but that less than two-thirds of the employers who are not members of the association should be in favour of their being represented by the association. The expression "less than two-thirds of the employers ..... are in favour" cannot ordinarily be construed to include a case where no employer is in favour. The language, especially the words "are in favour", contemplates that there should be some employers who are in favour of their being represented by the association. We would be putting an unnatural construction upon the words if we held that less than two-thirds should include none, as Sir Vithal Chandavarkar contends. The view that the clause does not contemplate a case where no employer who is not a member of the association is in favour of his being represented by the association gathers support from other considerations. The three sub-clauses provide in a descending order for the contemplation (1) of an association and two-thirds or more non-members agreeing to be represented by the association, (2) of an association and some non-members though they may be less than two-thirds, agreeing to be represented by it, and (3) of an association and no non-member agreeing to be represented by it and also of no association at all. The proviso to clause (b) is rather pertinent. It is to the effect that at least one of the representatives shall be from among the employers who have not agreed to be represented by the association. It is because clause (b) contemplates three different types of electors (1) members of the association (2) non-members consenting to be represented by the association and (3) non-members who do not agree to be

(3) non-members who do not agree to be represented by the association, that it becomes necessary to gaurnatee representation to the third Category. Perhaps the word "all" used in the expression "elected from among all the employers" which occurs in clause (b) was intended to emphasise the multiplicity of these categories. The proviso presupposes that there are some non-members who have agreed to be represented by the association. The reason underlying the proviso is that since the non-members who agree to be represented by the association are less than two_thirds i.e. cannot muster a sufficient majority, a dissident monority of non-members who will still remain to whom represented should be gaurnteed. But in a case where all non-members agree not to be represented by the association, there was no need to gaurantee separate representation to them, and that is why that case cannot be brought within the ambit of clause (b) but falls within clause (c). It will be noticed that but for the proviso, clauses (b) and (c) are almost of the same character in the matter of election and the number of representatives Had it been the intention that the expression "less than two-thirds" should include a case where no employers so agrees, words to that effect could have been used, as for example, by providing "but less than two-thirds of the employers is in favour of their or his being represented." The opening expression "in all other cases" in clause (c) has been advisedly used; for, it is intended to cover not only the case where there is no association at all, but also a case where there is an association but no employer is agreeable to be represented by that association. Had the true construction been that for which Sir Vithal pleads, the appropriate wording in clause (c) would have been "in cases where there is no association." In my opinion, therefore, in a case there the association does not represent all the employers, and no employer who is not a member of the association is in favour of his being represented by such association, the representative has to be elected under clause (c) and not under clause (b).

6. The next question is whether the individual employers who are members of the association and take part in the election

in the elections under clause (c) or for the matter of that under clause (b) should themselves cast votes, or whether the association is entitled to represent the member-employers and cast votes for them. It is true that under the definition given in clause (14) of section 3, an employer includes an association, and accordingly the word "employer" used in clause (b) and (c) would also include the Mill-owners' Association. But the definitions in the interpretation clause are to be used in the provisions of the Act or Rules, in so far as they are not inconsistent with the subject or context. Even assuming that the word "employer" in rule 39 has tobe given the same meaning as it has in section 3(14) of the Act, under sub-section (2) of section 27, in any proceeding under the Act an association of employers shall be entitled to represent any employer who is a member of the association of employers shall be entitled to represent any employers who is a member of the association. It is doubtful whether a meeting held by the Labour Officer under clauses (b) and (c) of rule 39 can be called a "proceeding" under the Act. Although "Proceeding" may include any prescribed mode of action for carrying into effect a legal right or an act necessary to be done in order to attain a given end, ordinarily that word relates to forms of law, to the modes in which judicial transactions are conducted. Assuming that the word "proceeding" it is still more doubtful whether the right of representation given by sub-section (2) of section 27 would include a right to vote by proxy, which is the claim made on behalf of the association. The association may no doubt be able to cast its one vote as an "employer"; but it cannot be permitted to cast as many votes as its members unless there is some statutory right of voting by proxy at such meetings. It is established law of meetings that there is no common law right to vote by proxy, and such power must, therefore be conferred by statute or by the regulations of the body concerned. (Cf. Meetings Law and Practice by Shackleton p.53 and Harben v. Phillips (1883) 23 Chancery Division p.17 at p.35). In these circumstances, and having regard to the use of the word "employers" in clauses (b) and (c), I am of opinion that all the

that all the employers, irrespective of the fact that some of them may be members of an association, would have to be given notices so that they could meet and proceed to elect not more than five representatives.

7. In this view, the action taken by the Labour Department seems to be in accordance with law.

P.M.L.D.
15/12.

Remembrancer of Legal Affairs.

U.R. to Labour Department, No. 676-8 enfl, dated the 13th December 1948.

I agree with opinion of R.L.A.

Sd/-

SMT/2.6.